

**THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE  
DECISION OF THE SOUTHERN LEASEHOLD  
VALUATION TRIBUNAL ON AN APPLICATION  
UNDER S168 (4) OF THE COMMONHOLD AND  
LEASEHOLD REFORM ACT 2002**



**Determination without an oral hearing in accordance with the procedure set out in Regulation 13 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003**

**Case Number:** CHI/21UD/LBC/2006/0012

**Property:** 1 Boscobel Lodge, Boscobel Road, St Leonards On Sea, TN38 0YL

**Applicant:** Boscobel Lodge Residents Company Limited

**Respondent:** Mr & Mrs McSweeney

**Tribunal:** Mr R T A Wilson LLB (Chair)  
Mr N Cleverton FRICS (Valuer Member)

**Date of the  
Tribunal's Determination:** 11<sup>th</sup> April 2007

1. This is a landlord's application under section 168(4) of the Commonhold and Leasehold Reform Act 2002 for a determination that a breach of covenant or condition in the tenant's lease has occurred. Neither the landlord nor the tenant has asked for an oral hearing, and the determination is made according to the procedure contained in Regulation 13 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003.
2. The application was made on the 8<sup>th</sup> November 2006 and directions were given on the 24<sup>th</sup> November 2006 which required the Applicant to supply a formal statement of case to the Tribunal and the Respondent, and for the Respondent to respond to the application within the timetable set out in the directions. Both parties have complied with the directions and supplied their statements of case together with their documents in support.
3. The Tribunal inspected the interior of the property prior to the hearing and found that it was occupied by a family which included two children under the age of

five. The Respondent confirmed that the family was occupying the flat by virtue of an assured shorthold tenancy.

4 It is apparent from the application and from the documents submitted by the parties that the Respondent is the registered proprietor of the lease relating to Number 9 Boscobel Lodge, Boscobel Road, St Leonards on Sea, East Sussex.

5 Clause 2 (11) of lease contains a covenant in the following terms, *“not to assign or underlet or part with the possession of the demised premises as a whole (otherwise than by way of mortgage or charge) without the written consent of the landlord first had and obtained such consent not to be arbitrarily or unreasonably withheld or delayed in respect of a respectable or responsible person or without procuring in the event of an assignment the transfer of a share in the landlord’s company providing that any assignee becomes a registered member thereof”*.

6 It is clear from the parties and indeed accepted by the Respondent that such written consent has not been issued.

7 In these circumstances we are satisfied that a breach of covenant in the tenant’s lease has occurred. The landlord may accordingly serve on the Respondent a notice under section 146(1) of the Law of Property Act 1925 but, by virtue of section 168(3) of the Act it may not do so until after the end of the period of 14 days beginning with the day after the date of service of this determination upon the Respondent.

8 The Applicant also alleges that the Respondent is in breach of both clause 2(9) of the lease and in breach of regulation 11 of the first schedule to the lease.

9 As to paragraph 11 of the first schedule this comprises of a restriction and not a covenant or condition. The Tribunal’s jurisdiction under clause 168 relates only to breaches of a covenant or condition and it does not extend to a regulation. In these circumstances the Tribunal has no jurisdiction over the alleged breach of regulation 11 and it makes no findings on this allegation..

10 Clause 2(9) of the lease states as follows, *“not at any time to use or occupy or permit to be used or occupied the said flat otherwise than as a single private residence.....and not to do or permit or suffer to be done on any part of the demised premises any act or thing which may be or become a nuisance disturbance injury annoyance or inconvenience to the landlord or the landlord’s other lessees or occupiers of the building or the owners lessees or occupiers of any adjoining or neighbouring premises or which may deteriorate or tend to deteriorate the value of any adjoining or neighbouring property”*.